

# Notice of Allowability

## Application No.

10/008,523

## Examiner

Sally A Sakelaris

## Applicant(s)

SNAIDR, JIRI

## Art Unit

1634

### -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 6/28/2004.
2. ☒ The allowed claim(s) is/are 1,2,9-24 and 28-30.
3. ☒ The drawings filed on 11/7/2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
  1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: German Application, 19921281.3, filed 5/7/1999.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                       |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|   | 9. <input type="checkbox"/> Other _____.  |

JEFFREY FREDMAN  
PRIMARY EXAMINER

9/3/04

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/27/2004 and 6/10/2004 and 6/28/2004 have all been entered.

***Response to Declaration***

The declaration filed under 37 CFR 1.132 filed 6/10/2004 is together with the amendments to the claims filed 5/27/2004 sufficient to overcome the standing rejections on claims 1, 2, 9-24 and 28-30.

***Priority***

Acknowledgement of claim to foreign priority of German Applications, 19921281.3, filed 5/7/1999 and 19936875.9 filed 8/05/1999 under 35 U.S.C. 119(a)-(d) has been made, however only the certified translations of PCT/EP00/03989 and 19936875.9 foreign priority documents have been received and as a result the claim to foreign priority under the same has been granted to these two documents. It should be noted that Applicant's earliest priority date is deemed to be 5/4/1999, one year before their first US filing.

***EXAMINER'S AMENDMENT***

Please cancel the following previously withdrawn claims:

Claims 25, 26, and 27.

***THE FOLLOWING IS AN EXAMINER'S STATEMENT OF REASONS FOR  
ALLOWANCE:***

The present invention is found to be allowable subject matter as its presentation of a method of detecting microorganisms comprising steps of fixing, hybridizing probe and target DNA, removing non-hybridized probe and subsequently separating the specifically bound probe from the target DNA prior to a detection step without using formamide represents a contribution over the prior art that lacks any such SEQ ID NO:44 or method of developing probes.

The closest prior art made of record is as follows:

Guillot et al. teach a means for qualitative and quantitative analysis of microbial populations through the use of at least one RNA-targeted oligonucleotide probe for *in situ* hybridization in whole cells; followed by the extraction of those probes which have become hybridized by separation from their target and elution from the microbial cells; as well as the detection and measurement of said extracted probes(WO99/18234, April 15, 1999). The reference does not teach a denaturing agent besides formamide to be capable of separating the bound probe from the target and therefore also does not teach the method wherein the detection signal associated with the separated nucleic acid probe molecules is greater than that with separated nucleic acid probe molecules obtained by incubation in a formamide solution.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for

Art Unit: 1634

Allowance.”


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sally A Sakelaris whose telephone number is 571-272-0748. The examiner can normally be reached on M-Fri, 9-6:30 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on 571-272-0782. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 1, 2004

Sally Sakelaris

  
JEFFREY FREDMAN  
PRIMARY EXAMINER

9/3/04